

SCHEDULES

SCHEDULE 22

POLICE MISCONDUCT AND PERFORMANCE PROCEDURES

PART 2

AMENDMENTS OF MINISTRY OF DEFENCE POLICE ACT 1987

- 12 The Ministry of Defence Police Act 1987 (c. 4) has effect subject to the following amendments.

Defence Police Federation

- 13 In section 3(4) (representation of a member of the Ministry of Defence Police by the Federation) for “on an appeal to the Secretary of State or as provided by” substitute “as provided in regulations made under”.

Regulations relating to disciplinary matters

- 14 (1) Section 3A (regulations relating to disciplinary matters) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The Secretary of State may make regulations with respect to—
- (a) the conduct of members of the Ministry of Defence Police and the maintenance of discipline;
 - (b) the suspension from duty of members of the Ministry of Defence Police.
- (1A) Without prejudice to the powers conferred by subsection (1), regulations under this section shall—
- (a) establish, or
 - (b) make provision for the establishment of,
- procedures for the taking of disciplinary proceedings in respect of the conduct of members of the Ministry of Defence Police, including procedures for cases in which such persons may be dealt with by dismissal.”
- (3) For subsection (2) substitute—
- “(2) The regulations may provide for decisions which would otherwise fall to be taken by the Secretary of State or the chief constable of the Ministry of Defence Police to be taken instead by—
- (a) a person appointed in accordance with the regulations; or
 - (b) the Ministry of Defence Police Committee.”

Status: This is the original version (as it was originally enacted).

Representation etc. at disciplinary proceedings

15 For section 4 substitute—

“4 Representation etc. at disciplinary proceedings

- (1) The Secretary of State shall by regulations make provision for or in connection with—
- (a) enabling the officer concerned or the relevant authority to be represented in proceedings conducted under regulations made in pursuance of section 3A;
 - (b) enabling the panel conducting such proceedings to receive advice from a relevant lawyer or another person falling within any prescribed description of persons.
- (2) Regulations under this section may in particular make provision—
- (a) specifying the circumstances in which the officer concerned or the relevant authority is entitled to be represented by a relevant lawyer;
 - (b) specifying the circumstances in which the officer concerned or the relevant authority is entitled to be represented by a person (other than a relevant lawyer) who falls within any prescribed description of persons;
 - (c) for securing that—
 - (i) the relevant authority may be legally represented, and
 - (ii) the panel conducting the proceedings may receive advice from a relevant lawyer,
 whether or not the officer concerned is legally represented.
- (3) Without prejudice to the powers conferred by this section, regulations under this section shall, in relation to cases where the officer concerned is entitled to legal or other representation, make provision—
- (a) for securing that the officer is notified of his right to such representation;
 - (b) specifying when the officer is to be so notified;
 - (c) for securing that proceedings at which the officer may be dismissed are not to take place unless the officer has been notified of his right to such representation.
- (4) In this section—
- “the officer concerned”, in relation to proceedings within subsection (1)(a), means the member of the Ministry of Defence Police to whom the proceedings relate;
- “the panel”, in relation to proceedings within subsection (1)(a), means the panel of persons, or the person, prescribed for the purpose of conducting the proceedings;
- “prescribed” means prescribed by regulations under this section;
- “relevant authority” means—
- (a) where the officer concerned is a member of the Ministry of Defence Police (other than a senior officer), the chief constable for the Ministry of Defence Police;

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- (b) where the officer concerned is a senior officer, the Ministry of Defence Police Committee;
“relevant lawyer” means—
 - (a) in relation to England and Wales, a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act), and
 - (b) in relation to Scotland or Northern Ireland, counsel or a solicitor;
 - “senior officer” means a member of the Ministry of Defence Police holding a rank above that of chief superintendent.
- (5) But in prescribed circumstances “relevant authority” also includes—
- (a) in relation to England and Wales, the Independent Police Complaints Commission;
 - (b) in relation to Scotland, the Police Complaints Commissioner for Scotland;
 - (c) in relation to Northern Ireland, the Police Ombudsman for Northern Ireland.
- (6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Subsection (6) does not apply to a statutory instrument containing (whether alone or with other provision) any regulations under this section coming into force at a time that is the earliest time at which any regulations under this section are to come into force since the commencement of paragraph 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008.
- (8) A statutory instrument within subsection (7) may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.”

Appeals against dismissal etc.

16 For section 4A substitute—

“4A Appeals against dismissal etc.

- (1) The Secretary of State shall by regulations—
 - (a) make provision specifying the cases in which a member of the Ministry of Defence Police may appeal to a police appeals tribunal;
 - (b) make provision equivalent, subject to such modifications as the Secretary of State thinks fit, to that made (or authorised to be made) in relation to police appeals tribunals by any provision of Schedule 6 to the Police Act 1996 (c. 16) or Schedule 3 to the Police (Scotland) Act 1967 (c. 77).
- (2) A police appeals tribunal may, on the determination of an appeal under this section, make an order dealing with the appellant in any way in which he could have been dealt with by the person who made the decision appealed against.

Status: This is the original version (as it was originally enacted).

- (3) The Secretary of State may make regulations as to the procedure on appeals to police appeals tribunals under this section.
- (4) Regulations under this section may, in particular, make provision—
- (a) for enabling a police appeals tribunal, in such circumstances as are specified in the regulations, to determine a case without a hearing;
 - (b) for the appellant or the respondent to be entitled, in a case where there is a hearing, to be represented—
 - (i) by a relevant lawyer, or
 - (ii) by a person who falls within any description of persons prescribed by the regulations;
 - (c) for enabling a police appeals tribunal to require any person to attend a hearing to give evidence or to produce documents,
- and regulations made in pursuance of paragraph (c) may apply subsections (2) and (3) of section 250 of the Local Government Act 1972 with such modifications as may be set out in the regulations.
- (5) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subsection (5) does not apply to a statutory instrument containing (whether alone or with other provision) the first regulations made under this section after the commencement of paragraph 16 of Schedule 22 to the Criminal Justice and Immigration Act 2008: such an instrument may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (7) In this section—
- “police appeals tribunal” means a tribunal constituted in accordance with regulations under this section;
 - “relevant lawyer” has the same meaning as in section 4.”